

SEP 27 2007

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

SHANE I. SOPHER,

Plaintiff - Appellant,

v.

MICHAEL WASHINGTON; et al.,

Defendants - Appellees.

No. 06-35172

D.C. No. CV-05-06322-DJH

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Shane I. Sopher, an Oregon state prisoner, appeals pro se from the district court's order dismissing pursuant to 28 U.S.C. § 1915A his 42 U.S.C. § 1983 action alleging violations of the Due Process, Equal Protection, and Ex Post Facto

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Clauses. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo dismissals on statute of limitations grounds, *Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. 2004), and we vacate and remand.

Because the district court dismissed the complaint on screening, without leave to amend, Sopher had no opportunity to argue that the statute of limitations should have been equitably tolled. *See Cervantes v. City of San Diego*, 5 F.3d 1273, 1276-77 (9th Cir. 1993) (dismissal on statute of limitations grounds disfavored where matters outside the complaint may not be considered and where equitable tolling may apply); *see also Chaney v. Fields Chevrolet Co.*, 264 Or. 21, 26-27 (1972) (indicating that fraudulent concealment is recognized in Oregon as basis for tolling the statute of limitations). We remand for the district court to determine in the first instance whether equitable tolling applies to the circumstances of this case.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.